

### REMARKS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1, 5-8, 10-12, 16-19, 21 and 22 are pending in the present application. Claims 2 and 13 have been cancelled, and claims 1, 6, 7, 10, 12, 17, 18 and 21 have been amended by the present amendment.

In the outstanding Office Action, the Declaration was objected to; and claims 1, 2, 5-8, 10-13, 16-19 and 21-23 were rejected under 35 U.S.C. § 103(a) as unpatentable over Replay Gain in view of Takahiro.

Regarding the objection to the Declaration, enclosed is a Declaration and an Application Data Sheet that properly shows the residence information of the inventor.

Claims 1, 2, 5-8, 10-13, 16-19 and 21-23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Replay Gain in view Takahiro. This rejection is respectfully traversed.

Independent claim 1 has been amended to include subject matter similar to that recited in dependent claim 2. In particular, independent claim 1 includes a combination of features and has been amended to clarify that the step (a) determines the audio level average of the decoded data by excluding certain parts of the decoded data having an audio level outside of a prescribed range extending from a maximum audio reference level to a minimum audio reference level. Independent claims 7, 12 and 18 include similar features in a varying scope.

These features are supported at least by the non-limiting example shown in Fig. 2 and the corresponding description in the specification. For example, as shown in Fig. 2, the minimum parts of the decoded data and the maximum parts of the decoded data are excluded. In Fig. 2, this includes a portion that is shown outside of the maximum lines as well as the portion inside of the minimum lines. Thus, excluded parts are prevented from effecting the overall audio level average of every song (see also paragraph [025] of the present application).

Regarding the subject matter recited in dependent claim 2, the Office Action indicates that Replay Gain teaches this in the calculation page under the heading "3. statistical processing". However, this portion of Replay Gain merely illustrates calculating RMS signal

levels every 50 milliseconds using a single value to represent the perceived loudness of the entire file. That is, Replay Gain sorts the RMS energy values into numerical order and then picks a value near the top of the list. That is, in Replay Gain, only the top portions of the RMS values (related to background noise) are removed. Replay Gain does not take into consideration a combination of the audio level outside of a prescribed range extending from a maximum audio reference level to a minimum audio reference level as in the present invention. Thus, combining Replay Gain with Takahiro does not result in the claimed invention.

Accordingly, it is respectfully submitted independent claims 1, 7, 12 and 18 and each of the claims depending therefrom are allowable.

### CONCLUSION

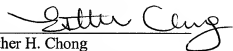
In view of the above remarks, it is believed that claims are allowable.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact David A. Bilodeau, Reg. No. 43,325, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

By 

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